

# **EXHIBIT 1**

## Jeff Freimund

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**From:** Davies, Dan [DanDavies@dwt.com]  
**Sent:** Monday, June 18, 2012 3:49 PM  
**To:** Jeff Freimund; danielj@atg.wa.gov; Bernard.Veljacic@clark.wa.gov; dunnwh@pacifier.com; western@wscd.com; gbogdanovich@lldkb.com; patriciaf1@atg.wa.gov  
**Cc:** kathleen.zellner@gmail.com; dhjohnson43@aol.com  
**Subject:** RE: Spencer v. Clark County et al. - request for filing extension and proposed deposition dates

Counsel,

I appreciate your willingness to stipulate to the two-week extension, but in light of the tight time frame Plaintiffs' counsel has decided it will seek FRCP 56(d) continuances for the pending summary judgment motions instead.

We will be sending deposition notices today, and our continuance motions will address to some extent our bases for wanting to depose the defendants, but we are willing to discuss the scope of discovery pending your summary judgment motions later this week or next week.

Plaintiffs agree to receive service by email.

Best regards,

Dan

**Dan Davies | Davis Wright Tremaine LLP**  
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**From:** Jeff Freimund [mailto:JeffF@fjtlaw.com]  
**Sent:** Tuesday, June 12, 2012 2:29 PM  
**To:** Davies, Dan; danielj@atg.wa.gov; patriciaf1@atg.wa.gov; Bernard.Veljacic@clark.wa.gov; dunnwh@pacifier.com; western@wscd.com; gbogdanovich@lldkb.com  
**Cc:** kathleen.zellner@gmail.com; dhjohnson43@aol.com  
**Subject:** RE: Spencer v. Clark County et al. - request for filing extension and proposed deposition dates

Counsel for defendants have conferred about your requests in the below email. Here is our collective response:

1. Defendants will sign a stipulation and agreed order allowing plaintiffs a two-week extension until July 2, 2012 to file and serve their response(s) to defendants' pending summary judgment motions on the condition that the stipulation and agreed order also provides that defendants have one additional week to file and serve their reply briefs on or before July 13, 2012, and that all of the pending summary judgment motions will be re-noted for July 13<sup>th</sup>, rather than the current noted date of June 22<sup>nd</sup>. The reasons for this request are that (a) July 4<sup>th</sup> falls in the middle of the 4 to 5 day timeframe for composing defendants' reply briefs as a result of agreeing to a two week extension and some of defendants' counsel have vacation plans for one or more days surrounding that national holiday, and (b) a reciprocal one week extension for defendants in return for agreeing to a two week extension for plaintiffs is fair. We agree to this stipulation and proposed order on the understanding plaintiffs will not be seeking another FRCP 56(d) continuance of the pending summary judgment motions unless currently unexpected, extraordinary

circumstances arise, and the stipulation and agreed order shall so state. This stipulation and proposed order also should expressly state that it does not apply to defendant Shirley Spencer's first summary judgment motion that was noted for hearing on May 18, 2012, and is currently pending the Court's ruling after briefing was completed.

2. There are many reported cases holding that qualified and absolute immunity encompasses immunity from discovery. In light of that established law and the fact that defendants' pending summary judgment motions are based in large part on qualified and/or absolute immunity, defendants will, if need be, move for a protective order precluding discovery while the motions are pending on any topics other than the applicability of the immunity defenses. For purposes of summary judgment only, defendants' immunity defenses assume the facts alleged by plaintiffs are accurate. Moreover, all defendants have previously been deposed and testified in prior court proceedings about all the material facts. Accordingly, we are frankly unable to discern any necessity for depositions at this point, especially as limited to determining the applicability of the immunity defenses. With these points in mind, please explain whether you believe depositions of defendants are necessary when properly limited to determining the applicability of the immunity defenses while the summary judgment motions are pending.
3. All defendants agree to service of pleadings by email based on the understanding that plaintiffs' counsel agree to the same.

We look forward to soon reviewing a draft stipulation and agreed order containing the terms set forth above. As you know, any stipulation and agreed order would need to be filed very soon in light of the current June 22<sup>nd</sup> noting date. Also, please let us know whether you agree that any discovery must be limited to the applicability of the immunity defenses while the summary judgment motions are pending. If not, we'll need to set up a FRCP 26(c) conference regarding the same in an effort to resolve the dispute before involving the Court by seeking a protective order. Thanks in advance for your consideration and professionalism.

Jeff Freimund  
 Freimund Jackson Tardif & Benedict Garratt, PLLC  
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**From:** Davies, Dan [<mailto:DanDavies@dwt.com>]  
**Sent:** Monday, June 11, 2012 3:15 PM  
**To:** Jeff Freimund; [danielj@atq.wa.gov](mailto:danielj@atq.wa.gov); [patriciaf@atq.wa.gov](mailto:patriciaf@atq.wa.gov); Veljacic, Bernard ([Bernard.Veljacic@clark.wa.gov](mailto:Bernard.Veljacic@clark.wa.gov)); [dunnwh@pacifier.com](mailto:dunnwh@pacifier.com); [western@wscd.com](mailto:western@wscd.com); Guy Bogdanovich ([gbogdanovich@lldkb.com](mailto:gbogdanovich@lldkb.com))  
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**Subject:** Spencer v. Clark County et al. - request for filing extension and proposed deposition dates

Counsel,  
 Kathleen Zellner's office has been engaged in hearings for another case in Missouri, and given the large number of summary judgment motions that require responses by next Monday, June 18, 2012, Plaintiffs' counsel requests a two-week extension for filing our responses.

Also, we plan on noting the defendants' depositions for August and September. Are the defendants available between August 27-30, September 5-7, and September 10-14, 2012?

Please let me know what deposition dates work best for you and if you will stipulate to a two-week extension for Plaintiffs' responses to your summary judgment motions.

Also, Plaintiffs agree to receive service by email in accordance with CR 5(b)(7) and Fed. R. Civ. P. 5(b)(2)(E). Please confirm if you also agree to receive service by email.

Best regards,

Dan

**Dan Davies | Davis Wright Tremaine LLP**

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